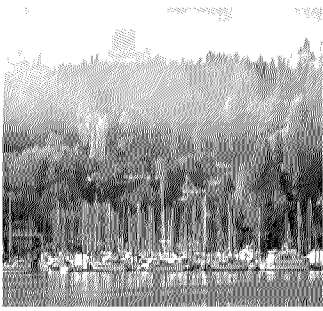


Water Law news News for November 22, 2010
Mary Grady to: Steven Neugeboren
Bcc: Mindy Kairis

11/22/2010 09:32 AM

From: Mary Grady/DC/USEPA/US
To: Steven Neugeboren/DC/USEPA/US@EPA,
Bcc: Mindy Kairis/DC/USEPA/US



Water Law News for November 22, 2010

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Climate Change

OMB Completes Review of EPA Final Rule For Underground Storage of Carbon Dioxide

The White House Office of Management and Budget has completed its review of a final rule written by the Environmental Protection Agency to govern underground storage programs for carbon dioxide....

Climate Change

New York Task Force Weighs Vulnerability To Sea Level Rise, Urges Protective Actions

ALBANY, N.Y.—The New York State Department of Environmental Conservation released a draft task force report Nov. 12 that assesses the state's vulnerability to rising sea levels and makes a series of recommendations to protect...

Enforcement

Motion to Revoke BP Probation in Spill At Prudhoe Bay Could Mean More Fines

ANCHORAGE, Alaska—BP Exploration (Alaska) Inc.'s federal probation officer has accused the company of violating terms of its plea bargain over the 2006 Prudhoe Bay pipeline spill, a charge that could lead to more fines against...

Everglades

Florida Supreme Court Upholds Bond Issue For Everglades Purchase, Not Options to Buy

TAMPA, Fla.—The Florida Supreme Court on Nov. 18 upheld the state's authority to issue bonds for the purchase of U.S. Sugar Corp. land to help restore the Everglades, but ruled that the state failed to demonstrate a public interest...



Inside EPA's Water Policy Report, 11/22/10

<http://insideepa.com/Water-Policy-Report/Water-Policy-Report-11/22/2010/menu-id-127.html>

EPA Support For Key 'Pristine' Waters Program Leaves Open Questions

EPA has partially approved Kentucky's landmark plan for determining how to provide increased protection to pristine waters, but activists say the agency's action fails to clarify which waters are subject to the strict requirements, maintaining uncertainties that they say stem from an appellate ruling but which could potentially spark further litigation and intensified lobbying to have EPA address the issue in a pending rulemaking.

THE INSIDE STORY

an environmental policy blog

Fracking Tort Case To Continue

A federal judge has denied almost all efforts by the oil and gas company Cabot to dismiss a tort lawsuit that citizens brought against the company for alleged damage caused by Cabot's drilling operations, including . . .



<http://www.greenwire.com>

NATURAL GAS: Pa. regulators approve tighter drilling safety standards (11/19/2010)

Pennsylvania state regulators yesterday unanimously approved a set of proposed stricter safety standards for natural gas drilling.

The proposed standards, approved by the Independent Regulatory Review Commission, are expected to be finalized by January and are part of regulators' efforts to update Pennsylvania's environmental protection laws. They would affect companies going after natural gas

in the Marcellus Shale.

"Today's action is another major step in making sure that Pennsylvania updates its regulations and grows its oversight with the Marcellus industry," state Department of Environmental Protection Secretary John Hanger said.

The regulations affect the maximum allowable well pressure, standards for well cement and pipes and the drilling industry's reporting of gas that reaches residential water wells. Drilling companies would also be required to send reports to the Pennsylvania DEP that state the volumes and types of chemicals used in wells ([AP/CNBC](#), Nov. 18). -- **AP**

NATURAL GAS: Hydraulic fracturing proponents strike back (11/19/2010)

Facing mounting opposition and scrutiny of hydraulic fracturing, the oil industry's primary trade group is speaking out against increased regulations for the technique, which blasts mixtures of water and chemicals into shale rock to release natural gas.

"Hydraulic fracturing is safe, and lawmakers should be cautious in their efforts to restrict it," said Sara Banaszak, a senior economist for the American Petroleum Institute. "Adding unnecessary additional regulation of this practice could kill jobs and important economic activity and also hamper our nation's energy security."

Up to 80 percent of the natural gas wells drilled in the United States over the next decade are likely to use hydraulic fracturing, Banaszak said.

However, several states and local governments are considering restricting hydraulic fracturing or banning it altogether. More agencies are calling on energy companies to disclose what chemicals are used in the process, concerned that they could contaminate rivers and drinking wells.

"The top priority of our industry is to provide this energy in a safe, technologically sound way, with the least possible impact on the environment," Banaszak said. State regulations already apply to the process, but both of those messages may not be getting across, she said.

"We haven't done a good enough job, maybe, communicating the way that regulation occurs at the state level," Banaszak said.

U.S. EPA is beginning to study hydraulic fracturing, and subpoenaed Halliburton Co. for the chemical components of its fracturing fluids after the energy company refused to disclose the information voluntarily. The Interior Department also is planning a forum Nov. 30 (Jennifer Dlouhy, [Houston Chronicle](#) , Nov. 18). -- **LP**

EVERGLADES: Fla. high court bars use of public cash to reserve land-purchase rights (11/19/2010)

The Florida Supreme Court ruled yesterday that public money can be used to buy U.S. Sugar land for Everglades restoration outright, but cannot be borrowed to just reserve the right to buy land in the future.

The South Florida Water Management District, which purchased 26,800 acres from U.S. Sugar for \$197 million last month, had proposed borrowing \$50 million to reserve the right to buy thousands more acres at a frozen price, as part of an ongoing effort to restore the Everglades.

Opponents had sued to stop the latter transaction, arguing it was a waste of taxpayers' money and did nothing to actually help the fragile and polluted ecosystem. The Supreme Court agreed there was no valid purpose in spending money when there was no guarantee the land would be purchased.

However, the ruling does confirm the legality of the district's first purchase, and sets a precedent for how the water district will likely have to proceed with land deals in the future.

"I view it as a victory, sort of after the fact," district board Chairman Eric Buermann said about the Supreme Court ruling. "It certainly validates and ratifies the transaction" (Andy Reid, [South Florida Sun-Sentinel](#) , Nov. 18). -- **LP**

ARMY CORPS: Court dismisses challenge to Delaware River dredging (11/19/2010)

Lawrence Hurley, E&E reporter

A federal judge has rejected the state of Delaware's claim that the Army Corps of Engineers needed to obtain a state permit before starting a dredging project in the Delaware River.

The Delaware Department of Natural Resources and Environmental Control had alleged that the corps had violated the federal Clean Water Act and several other laws in failing to seek permits from the state and federal government. The plan, originally proposed decades ago, is to deepen the channel from 40 feet to 45 feet in order to accommodate larger vessels.

U.S. District Judge Sue Robinson of the District of Delaware dismissed the state's claim in a ruling issued earlier this week. The state had been joined by New Jersey and several environmental groups, including Delaware Riverkeeper, which cited concerns about possible harm to Atlantic sturgeon that would be caused by the dredging.

The legal back-and-forth between the state and the corps has been going on since the state rejected a 2001 permit application. The state cited various changes to the original project since it was first proposed in the 1990s.

The most recent squabble was prompted when the corps signed a contract in Oct. 2009 with the Philadelphia Regional Port Authority for regular maintenance dredging of the river. A clause in the contract allowed the corps to dredge to 45 feet in some areas.

The state sought and obtained a preliminary injunction that prevented the corps from going ahead with its plan while Robinson considered whether the corps was acting in compliance with the law.

Robinson concluded the state had no grounds to prevent the dredging.

The key legal question was whether, under the Clean Water Act, the corps' plan could be considered "maintenance," as the corps claimed, or "expansion" or "enhancement" as the state asserted. Robinson found that it was the former, which does not require permits.

Taking into account the increasing size of vessels, "deepening the Delaware River channel to 45 feet ... may be viewed as dredging designed to 'maintain' the current level of 'navigation' into the area's ports," she wrote. Robinson noted that the issue is "of first impression," meaning other courts have not ruled on it before.

In response to the ruling, the state environmental agency said in a statement that the decision "severely restricts the state's ability to monitor or otherwise provide oversight to ensure that the corps' dredging of the Delaware River is done in a manner that minimizes harm to the environment."

ClimateWire -- Mon., November 22, 2010 -- [Read the full edition](#)

1. POLITICS: Republicans learn the perils of being politically incorrect on climate change

Defeat came for Republican Rep. Bob Inglis because he slid to "Satan's side." That's how South Carolina voters perceive Inglis' newfound belief in climate change, says the outgoing lawmaker, who lost his primary bid in June to tea party candidate, and now representative-elect, Trey Gowdy. Inglis reflected on several blasphemies he committed in the eyes of voters in a departing interview last week, held in his congressional office. They ranged from opposing President George W. Bush's troop surge in Iraq to supporting his Troubled Asset Relief Program. But none of those, Inglis said, had as strong an impact as his assertions that atmospheric warming is a scientific certainty.

2. POLICY: Can a carbon tax replace cap and trade?

3. EMISSIONS: Rising use of coal limits expected CO2 cuts from recession -- study

4. DIPLOMACY: Former top climate negotiator says treaty talks should focus on 'green growth'

5. NEGOTIATIONS: Norway seeks to extend Kyoto treaty beyond 2012

6. STATES: Sparring continues in wake of Calif.'s ethanol adjustment

7. JAPAN: Fossil fuel tax considered, but no legislation before Cancun

8. NUCLEAR POWER: Cheap coal, lack of labor may delay Southeast Asia plans

9. SCIENCE: IPCC mistake not responsible for lack of climate treaty -- chairman

10. CARBON CAPTURE: Wyo. to test site's underground storage potential